

FEB 17 2009

MOLLY C. DWYER, CLERK  
U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

JOAQUIN ALBERTO AYALA-OROS,

Defendant - Appellant.

No. 07-50433

D.C. No. CR-06-00610-BEN-1

MEMORANDUM<sup>\*</sup>

Appeal from the United States District Court  
for the Southern District of California  
Roger T. Benitez, District Judge, Presiding

Submitted February 12, 2009<sup>\*\*</sup>  
Pasadena, California

Before: KLEINFELD, BEA and IKUTA, Circuit Judges.

---

<sup>\*</sup> This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

<sup>\*\*</sup> The panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

Border patrol agents did not violate Ayala-Oros's Fourth Amendment rights by detaining him for a secondary inspection on account of his nervousness. *See, e.g., United States v. Taylor*, 934 F.2d 218, 221 (9th Cir. 1991).

The district court did not clearly err by crediting the testimony of Border Patrol agents and, based on such testimony and the agents' nonthreatening behavior, concluding Ayala-Oros voluntarily consented to the search of his truck. *See United States v. Preciado-Robles*, 964 F.2d 882, 885 (9th Cir. 1992).

**AFFIRMED.**